

**CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
IN THE THIRD DEGREE  
(Sale of a Narcotic Preparation  
to a Person Less Than 21 Years Old)  
Penal Law § 220.39(9)  
(Committed on or after Sept. 1, 1979)  
(Revised April 4, 2003)<sup>1</sup>**

The (specify) count is Criminal Sale of a Controlled Substance in the Third Degree.

Under our law, a person is guilty of Criminal Sale of a Controlled Substance in the Third Degree when that person knowingly and unlawfully sells a narcotic preparation to a person less than twenty-one years old.

The following terms used in that definition have a special meaning:

The term NARCOTIC PREPARATION includes (specify).<sup>2</sup>

SELL means to sell, exchange, give or dispose of to another.

[Sell also includes an offer or agreement to sell even if actual delivery does not occur, provided that, at the time of the offer or agreement, the person has the intent and ability to make the sale. An intent is a conscious objective or purpose. Thus, a person acts with intent to sell when that person's conscious objective or purpose is to sell.]<sup>3</sup>

A person KNOWINGLY sells (specify) when that person is aware that he or she is selling a substance which contains

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<sup>1</sup> The revision was for the purpose of expanding the definition of the term "sell" as it applies to an offer or agreement to sell.

<sup>2</sup> See Penal Law § 220.00(8).

<sup>3</sup> See Penal Law § 220.00(1); *People v. Samuels*, 99 N.Y.2d 20 (2002).

(specify).<sup>4</sup> For this charge, the People need not prove that the defendant was aware that the person to whom the (specify) was sold was less than twenty-one years old.<sup>5</sup>

A person UNLAWFULLY sells (specify) when that person has no legal right to sell it.<sup>6</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to sell (specify) .

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date) , in the county of (county), the defendant, (defendant's name) , sold (specify) ;
2. That the defendant did so knowingly and unlawfully; and
3. That the person to whom the (specify) was sold was less than twenty-one years of age.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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<sup>4</sup> See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

<sup>5</sup> See Penal Law § 15.20(3).

<sup>6</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).